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February 15, 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS



United States Department of Justice
United States Attorney's Office
Western District of Texas

BY: lad
DEPUTY

Matthew Mueller
Assistant United States Attorney

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Austin, Texas 78701

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February 14, 2022

**Via Certified Mail
and Email**

Robert E. Barnes, Esq.
BARNES LAW
700 S. Flower St., Suite 1000
Los Angeles, CA 90017
robertbarnes@barneslawllp.com

Re: *Children's Health Defense v. Food & Drug Admin.*, 6:22-cv-00093-ADA-JCM
U.S. District Court for the Western District of Texas, Waco Division

Dear Mr. Barnes:

According to your court filings, on January 31, 2022, you attempted to serve the U.S. Attorney's Office for the Western District of Texas with a Complaint in the above-described case. ECF No. 4 at 4. I write to inform you that, if this was an attempt at service, our office believes your attempt at service to be defective.

Federal Rule of Civil Procedure 4(i) details service requirements. Rule 4(i)(1) details how to serve the United States. Specifically, to serve the United States in this case, you must comply with Rule 4(i)(1)(A), under which you must personally serve one of the individuals designated to receive service.¹ You may also address service via certified mail to the individual authorized to receive service via certified mail. These individuals are all located in the San Antonio office of the U.S. Attorney. Notably, you attempted service on an individual in Waco, Texas, and that office is not designated to receive service of a complaint of this kind. Thus, your attempted service was not valid.

Rule 4(i)(2) details how to serve a United States agency, or an employee or officer of such an agency sued in their official capacity. Specifically, you must serve any United States agency or a United States officer or employee sued in an official capacity by registered or certified mail to the agency, officer, or employee. Your lawsuit names as defendants the Acting Commissioner of Food and Drugs, and the U.S. Food and Drug Administration, which are, respectively, an employee and a component of the Department of Health and Human Services. 45 C.F.R. § 4.1 requires that the summons and complaint should be served on these entities by mail sent to the General Counsel, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, DC 20201. Due to COVID-19, the Department of Health and Human Services has insisted upon "strict compliance" with service to this address through

¹ A list of individuals is available on the Court's website at <https://www.txwd.uscourts.gov/wp-content/uploads/For%20Attorneys/AmendedDesignationofAgentsforServiceofProcess.pdf>. I am also including a copy of this designation with this letter.

“registered or certified mail.”² The proof of service upon the acting commissioner and agency does not reflect compliance with this provision.

While there are provisions in the Federal Rules that allow for waiver of service, the United States and its agencies are not listed as entities that can waive service and, therefore, we must insist upon compliance with the applicable Federal Rules. See 1993 amendments to Fed. R. Civ. P., subdivision (i). Defendants’ actual notice of the litigation is insufficient to satisfy the requirements of Rule 4. See *Ayika v. Sutton*, 378 F. App’x 432, 434 (5th Cir. 2010) (citing *Way v. Mueller Brass Co.*, 840 F.2d 303, 306 (5th Cir. 1988)). Also, please note that the government does not have the ability to waive any jurisdictional or procedural prerequisite to suit against it.

We await proper service of the Summons and Complaint in the above-captioned matter. The answer period does not begin to run until you have properly served the United States, agency, and acting commissioner in accordance with Rule 4. See Rule 12(a)(3).

Sincerely,

Ashley C. Hoff
United States Attorney

By: /s/ Matthew Mueller
Matthew Mueller
Assistant United States Attorney

Encl: Designation of Agent for Service

cc: Via FED EX
U.S. District Clerk’s Office

Via EMAIL ONLY
James W. Harlow, U.S. Dep’t of Justice, Civil Division
James Allred, U.S. Food and Drug Admin.

² <https://www.hhs.gov/regulations/service-process-covid-19-national-emergency/index.html>.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXASCLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY 
DEPUTY CLERKAMENDED DESIGNATION OF AGENTS FOR SERVICE OF PROCESS

TO: Ms. Jeanette J. Clack, Clerk of Court
 United States District Court
 Western District of Texas
 San Antonio, Texas

Pursuant to Rule 4(i)(1)(A) of the Federal Rules of Civil Procedure, I hereby designate the following individuals only as agents to accept delivery of service of process for the United States Attorney for the Western District of Texas. Please note that these individuals are located in the San Antonio Division at our offices located at 601 N.W. Loop 410, Suite 600, San Antonio, Texas:

MARY F. KRUGER
 CLAYTON DIEDRICH
 MELISSA P. ALBRIGHT
 KERI A. BOWDEN
 NITA BROOKE
 ERICA GARZA
 JOAN JONES
 STEPHANIE KARAM
 HOLLEE PURYEAR
 STEPHANIE RICO
 JOANIE MIRELEZ

Pursuant to the same Rule 4(i)(1)(A), I hereby also designate Stephanie Rico the "Civil Process Clerk" to whom mailings of a summons and complaint by registered or certified mail to the U.S. Attorney are to be sent. Certified or registered mail service upon the United States Attorney for the Western District of Texas should be addressed as follows:

Ms. Stephanie Rico
 Civil Process Clerk
 Office of the United States Attorney
 for the Western District of Texas
 601 N.W. Loop 410, Suite 600
 San Antonio, Texas 78216-5597

In the event that service under Rule 4(i)(1)(A) is to be made on the United States of applications for temporary restraining order, motions for preliminary injunctions, or orders to show cause, the following individuals at the U.S. Attorney's Office are designated as additional persons upon whom personal delivery service may be made in their respective Divisions for those limited

processes only:

Alpine:	Betty Ramirez Lance Kennedy Rosa Maria Martinez
Austin:	Kartik Venguswamy Lori Wilson Lucinda Harris Rachel Mercado Sarah Chambers Sarah Erney
Del Rio:	Adriana Perez Bertha Meza James Ward
El Paso:	Eduardo R. Castillo Magdalena Jara Maria Lilia Molina Priscilla Roldan
Midland:	Brandi Young DeeDee Rayos
Waco:	Brenda Wright Donna Myrdahl Mark Frazier

Please cause this Amended Designation of Agents for Service of Process to be posted and/or published in your office at all court points in the Western District of Texas so as to receive the greatest possible circulation among members of the bar or general public who might be involved in civil litigation with the Government. Any questions regarding this Amended Designation may be addressed to Assistant U.S. Attorney Mary F. Kruger, Chief, Civil Section, Tel. (210) 384-7360.

Respectfully submitted,

Signed: November 2, 2021

Digitally signed by
ASHLEY HOFF
Date: 2021.11.04
18:34:52 -0500


ASHLEY C. HOFF
United States Attorney
Western District of Texas